

**Title 2
ADMINISTRATION**

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2.60 PUBLIC DEFENSE

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2.60.010 Purpose. It is declared a public purpose that each citizen is entitled to equal justice under law without regard to his ability to pay. It is the intention of King County to make publicly financed legal services available to the indigent and the near indigent person in all matters when there may be some factual likelihood that he may be deprived of his liberty pursuant to the laws of the state of Washington or King County. It is also the intention of King County to make such services available in an efficient manner which provides adequate representation at reasonable cost to the county. (Ord. 8257 § 1, 1987).

2.60.020 Department - duties - provision of services by contract authorized - approval.

A. The department of public defense is responsible for managing and being fiscally accountable for the provision of public defense services.

B. The duties of the department of public defense shall include:

1. Providing legal defense services in accordance with Section 350.20.60 of the King County Charter and this chapter;

2. Providing legal defense services in an efficient manner that ensures effective representation at reasonable cost to the county;

3. Screening and determining eligibility for legal defense services through the department. In addition, the department shall secure reimbursement from eligible persons, including the parents of juveniles receiving legal defense service through the department, when the person can afford to pay some or all of the cost to King County of providing them such legal defense services;

4. Establishing and maintaining an assigned counsel panel that includes attorneys acceptable to the department who wish to participate in the defense of persons eligible for services through the department;

5. Assigning cases to assigned counsel where conflicts of interest or other special circumstances exist which require use of assigned counsel;

6. Preparing an annual budget for the department that evaluates and forecasts service delivery levels and department expenses for service delivery, contractors, assigned counsel and administration. The evaluations and forecasts shall include an analysis of the impact, if any, of changes in the procedures or practices of the courts, prosecutor, police or other elements of the criminal justice system; and

7. Fostering and promoting system improvements, efficiencies, access to justice and equity in the criminal justice system.

C. The department may provide its services to the state of Washington, tribal governments and municipalities in King County on a full cost recovery basis and is authorized to negotiate appropriate contractual agreements, subject to council approval by ordinance when required by law.

D. The department may provide services related to the Raising Our Youth As Leaders (ROYAL) project and is authorized to enter into appropriate contractual agreements. (Ord. 17678 § 2, 2013: Ord. 17588 § 3, 2013: Ord. 17189 § 4, 2011: Ord. 14412 § 1, 2002: Ord. 8257 § 2, 1987: Ord. 383 § 2,

1970).

2.60.026 Public defender - duties - reports - appointment - confirmation - vacancies - qualifications - terms - removal - appeal - compensation.

A. The department of public defense shall be directed by the county public defender, whose duties include:

1. Managing the department of public defense;
- 2.. Ensuring the department employs the needed technical and public defense expertise to ensure effective delivery of public defense services;
3. Representing the executive in all city, county, state and federal forums where the defense perspective is required;
4. Ensuring that the American Bar Association Ten Principles for a Public Defense Delivery System, as approved by the American Bar Association House of Delegates in February of 2002, guide the management of the department and development of department standards for legal defense representation, and filing with the clerk of the council by April 1 of each year a report on the results of the county public defender's efforts in that regard;
5. Following the Washington State Standards for Indigent Defense Services; and
6. Developing and maintaining appropriate standards and guidelines for the qualifications and experience level of public defense attorneys and paraprofessionals;
7. Working collaboratively with the public defense advisory board and providing relevant nonprivileged information to the board upon its reasonable request; and
8. Fostering and promoting system improvements, efficiencies, access to justice and equity in the criminal justice system.

B.1. The county public defender shall be appointed by the executive, subject to confirmation by the council. The executive shall appoint one of the three candidates recommended by the public defense advisory board, except that the executive may request three additional candidates from the public defense advisory board, and the executive may then appoint the county public defender from among the six candidates, subject to confirmation by motion by the council. Confirmation requires the affirmative votes of at least five members of the council.

2. Within seven days after either a vacancy occurs in the office of the county public defender or the county executive learns that a vacancy is expected to occur within one hundred eighty days, including but not limited to a vacancy that will result from the expiration of the term of a county public defender who the executive determines to not reappoint, the executive shall provide written notice of the vacancy or expected vacancy to each member of the public defense advisory board and to the clerk of the council and shall commence a national recruitment for candidates to fill the vacancy. Within thirty days after commencing the recruitment, the executive shall provide to each member of the public defense advisory board the names, resumes and all other relevant information about all candidates who meet the qualifications for office set forth in the county charter and subsection C. of this section. Within sixty days after receiving the names, resumes, and other relevant information about the qualified candidates from the executive, the public defense advisory board shall provide in writing at the same time to the executive and the clerk of the county council the names of three candidates to fill the vacancy, together with copies of the candidates' resumes and other relevant information, including all written information upon which the board relied in choosing the three candidates. The board shall not rank the candidates, but may summarize the particular strengths of each candidate.

3. The executive may request in writing to the board chair, within fifteen days after receiving the list of three candidates, that the board provide to the executive the names, resumes and other relevant written information of three additional candidates, and the board shall comply with such a request within thirty days and shall at the same time provide a copy of the additional materials to the clerk of the council.

4. Within thirty days after receiving either the original list of three candidates or the list of three additional candidates, the executive shall appoint the county public defender by providing written notice of the appointment to the clerk of the council, who shall provide an electronic copy of the notice to each councilmember and to the chair of the public defense advisory board. If the board fails to timely recommend in writing to the executive three or six candidates, as applicable, the executive may either appoint the county public defender from among the candidates who have been recommended or wait until the board has recommended the requisite number of candidates and make the appointment within thirty days thereafter.

5. The county council may confirm or reject the executive's appointment by adoption of a motion with the affirmative votes of at least five members. A motion to confirm or reject the appointment shall be referred for committee consideration to the council's committee of the whole.

6. If the council rejects the executive's appointment of the county public defender, the public defense advisory board shall, within thirty days, recommend and provide in writing at the same time to both the executive and the clerk of the council the name, resume and all other relevant written information for one additional candidate.

7. If the council rejects the executive's appointment of the county public defender and the executive has not previously elected to request additional candidates from the advisory board under this subsection B.7. or subsection B.3. of this section, the executive may request the public defense advisory board for recommendation of four additional candidates. Such a request must be made in writing within seven days after the council rejects the executive's appointment, to the chair of the advisory board, with a copy to the clerk of the council. The advisory board shall, within thirty days after receiving the executive's request, recommend and provide in writing at the same time to both the executive and the clerk of the council the name, resume and all other relevant written information for four additional candidates.

8. Within thirty days after receiving the additional name or names, the executive shall appoint the county public defender from among the recommended candidates, except that the executive may not reappoint any candidate whose appointment has been rejected by the council. If the advisory board fails to recommend the additional candidate or candidates required by subsection B.6. and 7. of this section and provide the required written information, the executive shall proceed in the same manner as set forth in subsection B.4. of this section.

9. At any time after the commencement of the national recruitment process required by subsection B.2. of this section, except when the executive has appointed a county public defender and the council has not confirmed or rejected the appointment, the executive may request that the council authorize the commencement of a new national recruitment and public defense advisory board review and executive appointment process. Such a request must be submitted in writing to the clerk of the council with a copy to the chair of the advisory board. When so requested, the council may authorize commencement of a new recruitment, advisory board review, and appointment process by motion adopted with the affirmative votes of at least five councilmembers.

10. Within seven days after appointment, the county public defender shall designate an employee in the department of public defense to serve as a deputy and, in the event of a vacancy in that office, as interim county public defender until a new county public defender has been appointed.

C. The county public defender must be an attorney admitted to practice law in any jurisdiction within the United States and in active status and good standing. The county public defender shall, within two years after appointment, be an attorney admitted to practice law in the courts of the state of Washington and an active member of the Washington State Bar Association in good standing and shall, at the time of appointment, have at least seven years of experience as an attorney primarily practicing criminal defense, including both felonies and misdemeanors, as well as supervisory and managerial experience.

D. The term of office of the county public defender shall end at the same time as the term of the county prosecuting attorney. The county executive may reappoint the county public defender to additional four-year terms, subject to confirmation by the county council. The county council may confirm or reject the executive's reappointment by adoption of a motion with the affirmative votes of at least five members.

E. The executive may remove the county public defender from office for cause, which includes, but is not limited to:

1. The grounds for vacancy of elective office under Section 680 of the King County Charter;
 2. Failure to meet the applicable legal requirements for serving as county public defender, as set forth in the county charter or the county code;
 3. Conviction of a crime;
 4. A finding or stipulation of misconduct under the Washington Rules of Professional Conduct;
- and

5. Failure to manage the department effectively.

F. To remove the county public defender for cause, the executive shall serve a written notice of removal, specifying the cause for removal, by delivering a copy of the notice to the county public defender personally or by leaving a copy of the notice at the office of the county public defender with a secretary or

other assistant to the county public defender. The executive shall contemporaneously deliver a copy of the written notice of removal to the clerk of the council and to the chair of the public defense advisory board.

G. The county public defender may appeal removal to the council by delivering a written notice of appeal to the clerk of the council within ten days after service of the written notice of removal. The notice of appeal shall be delivered at the same time to the executive and to the chair of the public defense advisory board. The council shall review de novo the grounds for removal and either affirm or reverse the removal within thirty days after delivery of the notice of appeal by an affirmative vote of five members, or else the removal shall stand. Removal of the county public defender is effective upon the earliest of:

1. Ten days after service of notice of removal, if the county public defender serves no notice of appeal;
2. Affirmation of removal by the council following an appeal;
3. Thirty days after delivery of the notice of appeal, if the council neither affirms nor reverses the removal; or
4. The county public defender's delivery of a written notice of resignation to the executive or the clerk of the council.

H. The county public defender shall receive compensation at the same rate as the prosecuting attorney. (Ord. 17678 § 3, 2013: Ord. 17588 § 4, 2013).

2.60.031 Public defense advisory board - duties - membership - process - notice - qualifications - meetings - reports.

A. The public defense advisory board shall: regularly review the activities and plans of the department of public defense, make recommendations to the county public defender on matters concerning the department, advise the executive and council on matters of equity and social justice related to public defense, prepare the reports required in this section and such other reports as the board may deem appropriate; and when there is a vacancy in the office of county public defender, as provided in K.C.C. 2.60.026, recommend to the county executive candidates to fill the vacancy.

B. In performing its duties, the board shall work collaboratively with the county public defender and may reasonably request relevant, non-privileged information from the county public defender. The board through its chair shall consult with the county prosecutor, courts, and department of public defense in the performance of all of its duties except for the recommendation of candidates.

C. The board shall consist of eleven members, shall establish its own rules of procedure, subject to the county charter, the county code and other applicable law, and shall choose its own chair.

D. The board shall consist of one representative from each of the following:

1. The Washington Association of Criminal Defense Lawyers;
 2. The Washington state Office of Public Defense;
 3. The Washington Defender Association;
 4. The King County Bar Association;
 5. A bar association identified as a minority bar association by the Washington State Bar Association;
 6. A nonpartisan organization active in King County that focuses on mental health issues;
 7. A nonpartisan organization active in King County that focuses on substance abuse issues;
 8. A nonpartisan organization active in King County that focuses on issues concerning military veterans;
 9. A nonpartisan organization active in King County that focuses on issues related to poverty;
 10. A nonpartisan organization active in King County that focuses on juvenile justice issues;
- and
11. A nonpartisan organization active in King County that focuses on immigration issues.

E. Members of the board shall serve staggered three-year terms and until their successors are appointed and confirmed, except that the members designated in subsection D.1., 2., 3. and 4. of this section shall serve an initial term of one year and the members designated in subsection D.5., 6., 7. and 8. of this section shall serve an initial term of two years. If a member leaves the board midterm, the person appointed as a replacement shall serve the remainder of the unexpired term, rather than beginning a new term of three years. The county council may reappoint board members for additional three-year terms and may remove any board member by motion adopted with the affirmative votes of at least five councilmembers. Members of the board shall not be compensated for the performance of their

duties as members of the board, but may be reimbursed for parking expenses in the King County parking garage when attending meetings of the committee, which shall be deemed to be for the business convenience of the county and shall be paid for by the department of public defense.

F. The process for filling vacancies on the board is:

1.a. Upon learning of a pending or existing vacancy or one hundred twenty days before a scheduled vacancy on the board, the board chair and the county public defender shall provide written notice of the vacancy to the clerk of the council and to the executive.

b. Upon learning of a pending or existing vacancy or one hundred twenty days before a scheduled vacancy, the clerk of the council shall provide written notice of the vacancy to the executive, all councilmembers, the board chair, the county public defender and:

(1) to the represented organization for vacancies in the board seats designated in subsection D.1., 2., 3. and 4. of this section;

(2) to each of the bar associations identified as a minority bar association by the Washington State Bar Association for a vacancy in the board seat designated in subsection D.5. of this section; and

(3) by publication of notice of the vacancy in the official county newspaper and in the largest newspaper of general circulation within the county for the board seats designated in subsection D.6., 7., 8., 9., 10. and 11. of this section.

c. The notice shall specify the deadlines established in subsection F.2. of this section;

2. Within sixty days after the clerk of the council provides the notice required in subsection F.1.b. of this section, the represented organization, any minority bar association organization and each nonpartisan organization with the required subject matter focus that wishes to do so shall submit in writing at the same time to the county executive and the clerk of the council, the names of three candidates recommended for appointment to fill a vacancy in the board seat for which notice was required to be given to the organization, together with the resume of each candidate and all other written materials that the organization considered in deciding to recommend the candidate. The organization shall not rate the candidates, but may provide a brief description of the strengths of each candidate. The clerk of the council shall provide an electronic copy of the resumes and other written materials to each councilmember;

3. Within thirty days after receiving the written materials concerning the recommended candidates for a board seat designated in subsection D.1., 2., 3. or 4. of this section, or within sixty to ninety days after the clerk of the council provides the notice required in subsection F.2. [of this section] for a board seat designated in subsection D.5, 6., 7., 8., 9., 10. or 11. of this section, the county executive shall appoint one of the recommended candidates by providing written notice of the appointment to the clerk of the council, who shall provide an electronic copy of the notice to each councilmember. If the applicable organization fails to timely recommend three candidates, the executive may either make an appointment from among the recommended candidates or candidate or wait until the organization has recommended three candidates and make an appointment within thirty days after receiving the board's recommendation of the third candidate;

4. The county council may confirm or reject the executive's appointment by motion adopted by the affirmative votes of at least five members. A motion to confirm the appointment shall be referred for committee consideration to the council's law, justice, health and human services committee, or its successor; and

5. If the council rejects the executive's appointment of a board member, the clerk of the council shall provide written notice of the rejection to the executive and the represented organization or organizations. Within thirty days after receiving the written notice, the represented organization shall provide to the executive in writing, and contemporaneously to the clerk of the council, the name, resume, and all other relevant written information for one additional candidate. Within thirty days after receiving the additional candidate recommendation and the relevant written materials, the executive shall appoint the board member from among the recommended candidates, excluding any candidate whom the council has rejected. If a represented organization fails to timely provide the additional candidate recommendation and relevant written materials, the executive shall proceed in the same manner as if the entity had recommended fewer than the required number of candidates, as provided in subsection F.3. of this section.

G. Each member of the advisory board shall have substantial experience and expertise that are relevant to the work of the department of public defense and shall have an ability and willingness to commit the time necessary to attend meetings and participate effectively as a member of the board. A

majority of the members should have substantial familiarity with advocating on behalf of the indigent. To the extent practicable, the board membership shall reflect the diversity of the county. A member may not, while serving on the board, hold elective public office except precinct committee officer, be a candidate for elective public office except precinct committee officer, serve as a King County judicial officer, a King County prosecuting attorney or a King County public defender or be an employee of a King County court, the King County prosecuting attorney or the King County department of public defense.

H. The board shall meet at least once every two months and shall issue at least two written reports to the executive and the council each calendar year: one on the board's review of the executive's proposed budget for public defense; and one on the state of county public defense. The report on the state of county public defense shall include an assessment of the progress of the county in promoting equity and social justice related to the criminal justice system and may include recommendations for advancing equity and social justice.

I. The council shall provide for staffing of the advisory board. (Ord. 17678 § 4, 2013).

2.60.035 Conflict of interest avoidance - contracting for services generally.

A. The department shall manage cases and assign counsel in a manner that avoids conflicts of interest. The department shall adopt a policy to determine when a conflict exists and to avoid conflicting representation. If the department is unable to provide representation when a conflict exists, the department may contract for services of outside counsel or assign counsel from the assigned counsel panel.

B. The director may also contract for services of outside counsel if the director finds it appropriate to seek outside defense services and funding is available, taking into account the projected annual fiscal needs of the department.

C. If the department contracts for services of outside counsel, any entity that is able to provide the service may apply, including, but not limited to, private law firms, nonprofit entities, or a public corporation formed by the county whose chartered duties include the provision of public defense and related services. (Ord. 17588 § 7, 2013).

2.60.050 Availability of services.

A. Legal defense services through the department shall be made available to all eligible persons for whom counsel is constitutionally required. In addition, legal defense services through department shall be made available when funds are available: to any eligible person in legal proceedings arising in King County that may result in person's loss of liberty by an act of King County or any of its agencies, including, but not limited to, criminal proceedings alleging a violation of any law of the state of Washington or ordinance of King County, juvenile matters, mental illness and similar commitment proceedings, revocations and habeas corpus proceedings when they arise in King County; and to eligible parents and children in dependency proceedings arising in King County.

B. Legal defense services through the department may be made available to a person charged in King County with a felony of public notoriety, at his or her expense, when the court finds that the defendant is unable to employ adequate private counsel as a result of the public notoriety. The county public defender shall establish a reasonable fee for the legal defense services, subject to the approval of the court. (Ord. 17678 § 5, 2013: Ord. 17588 § 4, 2013: Ord. 8257 § 4, 1987: Ord. 383 § 5, 1970).

2.60.054 Receipt of services at no cost - eligibility. To be eligible to receive legal defense services at no cost through the public defense program, the person must be financially unable to obtain adequate representation without substantial hardship to the person and the person's family and there must be some factual likelihood that the person will be deprived of his or her liberty. If a person has some resources available that can be used to secure representation but not sufficient resources to pay the entire costs of private legal services without substantial hardship to the person and the person's family, the department of public defense shall determine how much the person shall pay for the legal defense services provided through the department of public defense. (Ord. 17683 § 2, 2013: Ord. 17588 § 11, 2013: Ord. 13328 § 2, 1998: Ord. 10167 § 1, 1991).

2.60.100 Reports or notices - requirements.

Except as otherwise provided under this chapter, reports or notices that are required under this chapter to be provided to the county council or the clerk of the council shall be filed in paper and

electronic form with the clerk of the council, who shall forward electronic copies to all councilmembers, to the chair of the public defense advisory board, to the lead staff of the budget and fiscal management committee or its successor and to the lead staff of the law, justice, health and human services committee or its successor. (Ord. 17678 § 6, 2013).